IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8729 of 1999
with
SPECIAL CIVIL APPLICATION No 8730 of 1999
with
SPECIAL CIVIL APPLICATION No 8735 of 1999
with
SPECIAL CIVIL APPLICATION No 8736 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHESHBHAI VALJIBHAI MEENA

Versus

STATE OF GUJARAT

Appearance:
MR HR PRAJAPATI for Petitioner
MR KT DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 13/03/2000

COMMON ORAL JUDGEMENT

#. As these matters relate to detenues who have been detained in connection with the same offence and same incidents, at the request of learned advocates for the parties, they are disposed off by this common judgment.

#. The petitioners have been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by Commissioner of Police, Ahmedabad City, Ahmedabad, in exercise of powers under Section 3(2) of the PASA Act, dated September 18, 1999.

#. The grounds of detention indicate that the detaining authority took into consideration one offence registered against the petitioners with Nashabandhi Police Station, South Zone, under the Bombay Prohibition Act. The detaining authority also took into consideration the statements of two anonymous witnesses in respect of two incidents that occurred on August 25, 1999 and September 3, 1999 and came to conclusion that the petitioners are "bootleggers", that their activities are detrimental to public order, that fear expressed by the witnesses qua the petitioners was genuine and therefore, powers under section 9(2) of the PASA Act were exercised by the detaining authority by not disclosing identity of these witnesses.

#. The petitioners have challenged the orders of detention on various counts. However, learned advocate for the petitioners has restricted his arguments to the fact that the subjective satisfaction recorded by the detaining authority for the need for exercise of powers under Section 9(2) of the PASA Act, cannot be considered as genuine. In order to substantiate this submission, learned counsel submitted that the statements of two anonymous witnesses were recorded on September 16, 1999 and September 17, 1999, which were verified by the detaining authority on September 17, 1999 and the orders of detention are passed on September 18, 1999. Learned counsel submitted, therefore, that there was no time for the detaining authority to give consideration to the aspect of correctness and genuineness of the facts stated by the witnesses and the fear expressed by the witnesses, respectively, in their statements. The exercise of powers under Section 9(2) of the PASA Act is improper and has resulted into denial of right of making an effective representation as contemplated under Article 22 (5) of the Constitution. Learned counsel for the petitioners therefore, submitted that, in light of the decision of a Division Bench of this Court in the case of Kalidas

Chandubhai Kahar v. State of Gujarat & Ors. 1993 (2) GLR 1659, these petitions may be allowed.

#. Mr. K.T.Dave, learned Assistant Government Pleader, has opposed this petition. He, however, does not dispute the factual aspect of the verification of the statements having been made on September 17, 1999 and the order having been passed on September 18, 1999.

#. It is clear from the grounds of detention that the detaining authority has taken into consideration the statements of two anonymous witnesses. The authority came to a conclusion that the fear expressed by these witnesses is correct and genuine and, therefore, the authority exercised powers under Section 9(2) of the PASA Act by not disclosing the identity of the witnesses. This Court is at loss to appreciate how the detaining authority could have arrived at this conclusion in such short spell. The detaining authority has not filed any affidavit-in-reply. It is, therefore, not possible to know as to what were the factors and material considered by the detaining authority besides the statements of the anonymous witnesses to come to conclusion that the fear expressed by the witnesses was genuine, that the incidents stated by the witnesses were correct and that there was need for exercise of powers under Section 9(2) of the PASA Act.

#. Similar such situation arose before a Division Bench of this Court in the case of Kalidas Chandubhai Kahar (supra), where the statements were verified on 16th October, 1992 and the order was passed on 17th October, 1992 and the Division Bench said that exercise of powers under Section 9(2) of the PASA Act was improper. This improper exercise of powers under Section 9(2) of the PASA Act was held to be detrimental to the right of the detenue of making an effective representation contemplated under Article 22(5) of the Constitution. The order of detention was, therefore, quashed. The facts of the present cases squarely fall in line with the facts of that case. The orders of detention, therefore stand vitiated in the instant cases as well and the petitions deserve to be allowed on this count alone.

#. In view of the above discussion, the petitions are allowed. The impugned orders of detention dated September 18, 1999 passed against the detenues Maheshbhai Valjibhai Meena, Premabhai Ramjibhai Meena, Balwantram Sonaram Bisnoi and Rajubhai Kartaram Jat, are hereby quashed. The detenues ordered to be set at liberty forthwith, if not required in any other matter. Rule

made absolute in all four matters with no orders as to costs.

[A.L.DAVE, J.]

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